

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY BANGKOK IMMEDIATE

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FOR UNDER SECRETARY MAW

THE FOLLOWING IS A REPEAT OF MANILA 0110

ACTION SECSTATE 03 JAN 75. QUOTE:

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E.O. 11652: N/A

TAGS: EGEN, PGOV, RP

SUBJECT: MOBIL OIL CASE

1. SUMMARY: NEWSMEDIA REPORTED LEGAL OPINION BY SECTY OF JUSTICE ABAD SANTOS THAT RULED AGAINST THE EXERCISE OF THE OPTION BY MOBIL OIL (PHILIPPINES) TO PURCHASE AN ADDITIONAL 7PERCENT EQUITY IN BATAAN REFINING CO. (BRC). BRC NOTIFIED MOBIL THAT SERVICE AND TECHNIAL AGREEMENT TO BE CANCELLED 28 MARCH 1975. END SUMMARY.

2. MOBIL, WHICH PRESENTLY OWNS 43PERCENT OF BRC OBTAINED OPTION TO PURCHASE ADDITIONAL 7PERCENT OF EQUITY FROM PNOC. OPTION WAS TO REMAIN OPEN UNTIL DEC 31, 1974. IN ORDER TO EXERCISE OPTION MOBIL REQUIRED TO PRESENT
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EVIDENCE QUOTE SATISFACTORY TO PNOC THAT ACQUISITION BY

MOBIL OF THE 7PERCENT OF SHARES OF BRC WILL NOT PREJUDICE IN ANY MANNER THE ABILITY OF BRC, PNOC AND/OR OF ANY OF THE COMPETENT AGENCIES OF THE PHILIPPINE GOVERNMENT TO PURCHASE PETROLEUM CRUDE FROM THE GOVERNMENT OF SAUDI ARABIA...UNQUOTE.

3. MOBIL OBTAINED LETTER FROM DR. ABDULHADY H. TAHER, GOVERNOR, PETROMIN, WHICH STATED: QUOTE OUR SUPPLY OF PETROLEUM CRUDE TO THE BATAAN REFINING CORPORATION, THE PHILIPPINE NATIONAL OIL COMPANY, OR ANY COMPETENT AGENCY OF THE PHILIPPINE GOVERNMENT, WILL NOT BE PREJUDICED IN ANY WAY EITHER BY MOBIL PETROLEUM CONTINUING TO HOLD A 43PERCENT INTEREST IN BATAAN OR BY MOBIL'S INCREASING ITS INTEREST TO 50 PERCENT. UNQUOTE. MOBIL THEN ATTEMPTED TO EXERCISE ITS OPTION. PNOC REFUSED AND IN LETTER OF DEC 17, 1974, MAINTAINED ITS POSITION THAT MOBIL STILL HAD NOT PRESENTED SUFFICIENT EVIDENCE THAT ACQUISITION OF ADDITIONAL 7PERCENT WOULD NOT JEOPARDIZE BRC'S ACCESS TO SAUDI ARABIAN CRUDE. PNOC'S POSITION BASED PRIMARILY ON ISSUE OF WHETHER PETROMIN CAN BIND THE SAUDI ARABIAN GOVERNMENT.

4. APPARENTLY, IN ORDER TO PROVIDE FIRMER LEGAL BASIS, PNOC ALSO REQUESTED LEGAL OPINION FROM DEPT OF JUSTICE WHICH WAS REPORTED UPON IN BOTH THE BULLETIN TODAY AND TIMES-JOURNAL. AS REPORTED, OPINION NOTED THAT PHIL CONSTITUTION REQUIRES ALL CORPORATIONS THAT OWN LAND TO BE AT LEAST 60PERCENT PHILIPPINE OWNED. THAT MOBIL ALREADY OWNED 3PERCENT MORE EQUITY IN BRC THAN PERMITTED BY CONSTITUTION AS BRC ACQUIRED LANDHOLDINGS IN COUNTRY IN COURSE OF ITS BUSINESS. THEREFORE, TO ALLOW MOBIL TO EXERCISE ITS OPTION WAS NOT LEGALLY FEASIBLE AS IT WOULD GIVE MOBIL 50PERCENT EQUITY.

5. OPINION ALSO STATED IN DICTUM THAT MOBIL'S OPTION WAS NOT AN ABSOLUTE ONE IN THAT EXERCISE OF OPTION WAS PREDICATED ON ITS PRESENTATION OF EVIDENCE CITED ABOVE, WHICH THEY HAD FAILED TO SUPPLY TO SATISFACTION OF PNOC.

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6. EMB ATTEMPTED TO OBTAIN COPY OF FULL LEGAL OPINION BUT WAS INFORMED THAT WAS NOT AVAILABLE FOR DISTRIBUTION. IF AN WHEN OBTAINED, IT WILL BE POUCHED TO DEPARTMENT.

7. IN ANOTHER DEVELOPMENT, BRC FORMALLY NOTIFIED MOBIL BY LETTER DATED DEC 27, 1974, THAT ITS SERVICE AND TECHNICAL AGREEMENT WITH BRC WOULD BE TERMINATED PURSUANT TO PROVISIONS OF THAT AGREEMENT ON MARCH 28,

1975. HOWEVER, THIS ACTION IS SOMEWHAT CONFUSED AS IT APPARENTLY DEPENDS ON STATUS OF SHAREHOLDERS AGREEMENT. PNOC CONTENDS THAT SHAREHOLDERS AGREEMENT TERMINATED WITH LAUREL/LANGELY, WHILE MOBIL CONTENDS THAT SHAREHOLDERS AGREEMENT STILL VALID AND THAT UNDER SUCH AGREEMENT SERVICE AND TECHNICAL CONTRACT CANNOT BE CANCELLED BY BRC UNTIL 1977.

8. COMMENT: WHILE PNOC'S INITIAL ACTION IN REFUSING TO ALLOW MOBIL EXERCISE OF OPTION BECAUSE OF FAILURE TO PRESENT EVIDENCE SATISFACTORY TO PNOC ON CONTINUING ACCESS TO SAUDI ARABIAN CRUDE COULD POSSIBLY BE QUESTIONED, THEY HAVE EFFECTIVELY SUPPORTED THEIR POSITION BY THE USE OF LEGAL OPINION BASED ON A CONSTITUTIONAL PROVISION. IT ALSO APPEARS FROM DOCUMENTS AVAILABLE EMB, THAT RIGHT TO CANCEL SERVICE AND TECHNICAL AGREEMENT IS CONTINGENT UPON STATUS OF SHAREHOLDERS AGREEMENT. THE PNOC POSITION RE: LAUREL/LANGLEY IS QUESTIONABLE, BUT EMB WILL NEED FURTHER INFO ON THIS POINT TO FULLY EVALUATE. NEVERTHELESS, PNOC APPEARS TO BE TAKING EXTRA CAUTION TO ATTEMPT TO KEEP MATTER WITHIN LEGAL FRAMEWORK.

9. EMB OFFERS MEETING WITH WELLES OF MOBIL JANUARY 6 AND WILL OBTAIN FURTHER DETAILS.
SULLIVAN

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